



UNITED STATES DEPARTMENT OF COMMERCE
The Secretary of Commerce
Washington, D.C. 20230

July 9, 2019

The Honorable Pat Toomey
United States Senate
Washington, DC 20510

Dear Senator Toomey:

Thank you for your letter regarding the Section 232 tariff exclusion request process, in particular as it relates to NLMK USA, a company in your district.

The Department of Commerce has diligently worked to develop its exclusion request process to ensure that tariffs protect our national security, while also minimizing undue impacts on downstream American industries. Two specific Department components have worked closely in these efforts – the Bureau of Industry and Security (BIS) and the International Trade Administration (ITA). BIS is the lead agency deciding requests for exclusion from the steel and aluminum tariffs, and ITA is analyzing the requests with objections to determine whether domestic production capacity can support the product needs of exclusion requesters.

I understand that NLMK submitted its exclusion requests in April 2018 and experienced a significant waiting period before its requests received decisions. After NLMK's requests were received by BIS, they were reviewed and within three weeks were posted publicly on Regulations.gov. Requests with objections were held, pending the implementation of the rebuttal process, which was added in September 2018 at the request of industry and members of Congress. Once the rebuttal/surrebuttal process was formalized on September 11, 2018, NLMK's exclusion requests were opened for rebuttal and subsequently surrebuttal. An additional delay was caused by the lapse in appropriations for the Department.

ITA and BIS reviewed NLMK's 87 exclusion requests and related objections, rebuttals, and surrebuttals, and BIS ultimately determined that the requested products were produced in the United States in a sufficient quantity and quality. Additionally, Customs and Border Protection advised BIS that the product specifications were inconsistent with the claimed tariff classifications (Harmonized Tariff Schedule (HTS) codes), and thus any tariff exclusion request would not be administrable as requested. In total, all 87 exclusion requests were denied, based on both domestic availability and incorrect HTS codes.

An effective exclusion request process is an important goal of the Department of Commerce. Should you have additional questions, please contact Charles Kolo Rathburn, Performing the Duties of the Assistant Secretary for Legislative and Intergovernmental Affairs, at (202) 482-3663.

Sincerely,

Wilbur Ross